IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's Order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2)(b)

Description of Case.

Special Appeal No. 146 of 2006

Date of decision:- 20.12.2006

A.F.R. (Approved for Reporting)

~~Not approved for reporting~~

Initial of Judge

Date:- 20.12.2006

Note:- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARANCHAL, AT NAINITAL

Special Appeal No. 146 of 2006

1. State of Uttaranchal
   through Secretary,
   Food & Civil Supply Department
   Civil Secretariat, Dehradun
2. Commissioner
   Food & Civil Supply Department
   Uttaranchal, Dehradun ... Appellants

Versus

1. Sri Ram Ratan S/o Sri Satya Narayan
   R/o 34, Someshwar Nagar, Rishikesh
   District – Dehradun
2. Sri Mahaveer Singh S/o Late Bhim Singh Bisht
   R/o Village Toap, P.O. Ujjawalpur,
   District- Chamoli
3. Sri Ganga Singh S/o Late Shri Diwan Singh
   R/o Village Chami Bhaiskot,
   District- Pithoragarh
4. Sri Dinesh Lal S/o Sri Bansilal
   R/o Village Saikot (Nagadi),
   P.O. Saikot, District – Chamoli
5. Sri Prabhakar Thapliyal
   S/o Sri Suchitra Nand,
   R/o 11 D/11, Sarkyukar Road, Dehradun
6. Sri Ajay Kumar Seni
   S/o Sri Shyam Lal Seni
   R/o Village Moheddinpur,
   P.O. Devband, District –Saharanpur
7. Sri Govind Singh S/o Sri Humum Singh Bisht
   R/o Village Kandarwala,
   P.O. Saikot, District – Chamoli ...Respondents

Sri N. C. Gupta learned Standing Counsel for the appellants.
Sri Pramood Belwal learned counsel for the respondents.

Delivery of Judgment :- 20th December, 2006

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble J.C.S. Rawat, J.

Per Hon'ble J.C.S. Rawat, J.

1. This special appeal under Rule 5 Chapter VIII of the High Court Rules has been filed against the judgment and order dated 27.03.2006 passed by the learned

Single Judge of this Court in Writ Petition No.1569(S/S)2003 Ram Ratan & others Vs. State & another, whereby the learned Single Judge has disposed of the writ petition with the direction to the appellants(department) to consider the regularization of the writ petitioners within a period of three weeks from the date of production of certified copy.

2. A writ petition bearing No.1659(S/S)2003 was filed before the learned Single Judge by the writ petitioners-Ram Ratan & others (now 'respondents' in Special Appeal) for the following relief's :-

> i. To issue a writ, order or direction in the nature of mandamus directing the respondents to regularize the services of the petitioners and pay minimum pay scale and allowance admissible to them.
>
> ii. To issue any other order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.
>
> iii. To award the cost to the petition to the petitioners.

3. The writ petitioners were appointed as daily wagers on the post of Godown Chaukidar in the department of Food and Civil Supply, Dehradun. The writ petitioners have been working continuously for a long time, but neither they were being paid the salary as their counterparts regular employees are getting not their services have been regularized. It was further stated that the Additional Commissioner, Food and Civil Department, Dehradun had sent a proposal for regularization of the writ petitioners to the Commissioner, Food and Civil Supply Department, Dehradun through Additional Secretary Food and Civil

Supply Department, Uttaranchal on 26.11.2002 for regularization and minimum pay scale of the writ petitioners. It was further stated that a proposal was also sent by the Food and Civil Controller Garhwal Region, Dehradun on 26.04.2003 to the Commissioner, Food & Civil Supply Department Uttaranchal, Dehradun for the regularization of the writ petitioners, but the appellants-department did not pay any heed to it. Thereafter, the Regional Food Supply Controller, Garhwal sent a letter dated 23.07.2003 to the Secretary, Food and Civil Supply, Dehradun for the regularization of the writ petitioners as per their seniority. When no heed was paid by the department for requlariza tion of the writ petitioners, the writ petitioners had filed the writ petition before the Court for seeking regularization and minimum pay scale.

4. The appellants-department had filed the counter affidavit wherein it has been pleaded that the writ petitioners were engaged by the department time to time as per the availability of work and they are being paid by the department @ Rs. 42.50 per day. It was further pleaded that the Secretary, Food and Civil Supply, Uttaranchal, Dehradun had taken a policy decision on 5th August, 2002 whereby the cadres of the Chaukidar, Waterman and Sweeper have been declared as ‘dying cadre’.

5. After hearing the parties, the learned Single Judge has disposed of the writ petition on 27.03.2006 with the direction to the department-appellants to consider the regularization of the writ petitioners within a period of three weeks from the date of copy of order.

6. Feeling aggrieved by the said order, the present special appeal has been preferred by the appellants-department.

7. Heard learned counsel for the parties and perused the record.

8. It was contended on behalf of the writ petitioners (respondents) that the writ petitioners have been continuously working for more than 10 years and as such they are entitled to be regularized in view of the dictum of the Hon'ble Supreme Court rendered in **Secretary, State of Karnataka Vs. Umadevi 2006 AIR SCW p/1991** in which it has been held as follows:-

> *"44. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in State of Mysore v. S.V. Naranayappa AIR 1967 SC 1071, R.N. Nanjundappa v. T. Thimmiah AIR 1972 SC 1767 and B.N. Nagarjan v. State of Karnataka AIR 1979 SC 1676 and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases abovereferred to and in the light of this judgment. In that context, the Union of India, the State of Governments and*

their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme."

9. Learned counsel for the appellants-department refuted the contention and contended that the Hon'ble Supreme Court has held in para 44 of Umadevi (supra) that the State Government or the Central Government should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals. In the case in hand, it is true that the writ petitioners have completed 10 years or service in the department. The observations of the Hon'ble Supreme Court quoted above only empowers the State Government and the Central Government to take steps

to regularize the services of the daily wagers who had completed 10 years. The said observation does not confer any right upon the court to issue mandamus for regularization of services of the writ petitioners. It has not been disputed by the learned counsel for the writ petitioners that the Government had not framed any scheme as directed by the Hon'ble Apex Court in the aforesaid observation. It is for the State to formulate a policy for regularization of those daily wages who have completed 10 years in service without the covers of order of the court. It is well settled position of law that it is not open to the High Court to exercise its discretion under Article 226 of the Constitution of India to issue mandamus directing the State or its instrumentalities to regularize the service of adhoc/daily wage/casual employees who had not been appointed by following the due procedure. A mandamus can not be issued in favour of the employees directing the Government to make them permanent since the employees cannot show that they have an enforceable legal right to be permanently absorbed or that the State has a legal duty to make them permanent. It is not disputed that the services of the writ petitioners have not been regularized by the department and they have not acquired the status of temporary or permanent Government servant. If the appointments have not been made by following due procedure, it does not confer any right upon the claimant to seek any benefit under the Statute. It has been held in **Umadevi** (supra) that the daily wagers have no legally enforceable right to be absorbed in the service and it is not the duty of the State to give them permanent appointment. The Hon'ble Supreme Court has also laid stress that the appointment dehors the Rules are nonest in the eyes of law. Moreover, the writ

petitioners had not pleaded in the petition that they had been appointed in the department *against the vacant post* by following the due procedure of law. In view of the above, we do not find any force in the contention of the learned counsel for the writ petitioners.

10. The learned Single Judge while relying upon the judgment of the Hon'ble Supreme Court in **State of U.P. Vs. Puttilal 2002 D (1) ELC 524 (SC)** directed the department-appellants to consider the regularization of the writ petitioners within three months. In para 45 of Umadevi (supra), the Hon'ble Supreme Court has clearly held that the decisions which run counter to the principle settled in this decision shall stands over-ruled. Para 45 of Umadevi (supra) is as follows:-

> *"45. It is also clarified that those decisions which rune counter to the principle settled in this decision, or in which directions running counter to what we have held herein, would stand denuded of their status as precedents."*

11. In view of para 45 of Umadevi, the decision rendered in Puttilal (supra) has been overruled. Therefore, the learned Single Judge erred in holding that the writ petitioners have a right to be absorbed in the department. The learned Single Judge also erred in directing the department-appellants to consider the regularization of the writ petitioners. As such, the writ petitioners are not entitled to be regularized.

12. In view of the foregoing discussion, the Special Appeal deserves to be allowed and is hereby allowed. Therefore, the impugned order dated 27.03.2006 passed

in Writ Petition No. 1659(S/S)/2003 is set aside and Writ Petition No. 1659(S/S)/2003 is dismissed. Parties shall bear their own costs in both the courts.

(J.C.S. Rawat, J.) **(Rajeev Gupta, C.J.)**

Dated 20th December, 2006

LSR